

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

COURTNEY BOYD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 2:06-CV-511-WKW
	)	
DR. DARBOUZE, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

On March 18, 2008, this court adopted the Magistrate Judge's Recommendation and granted the defendants' motions for summary judgment. (Doc. # 130.) On July 28, 2008, the plaintiff filed an Affidavit Accompanying Motion for Permission to Appeal in Forma Pauperis, which the court construes as a motion for leave to appeal *in forma pauperis* (Doc. # 139).

The court finds that the motion is due to be denied because it is not taken in good faith. "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). In making this determination as to good faith, a court must use an objective standard, such as whether the appeal is "frivolous." *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

This circuit has defined a frivolous appeal under section 1915(d) as being one "without arguable merit." *Harris v. Menendez*, 817 F.2d 737, 739 (11th Cir.1987) (quoting *Watson v. Ault*, 525 F.2d 886, 892 (5th Cir.1976)). "Arguable means capable of being convincingly argued." *Moreland v. Wharton*, 899 F.2d 1168, 1170 (11th Cir.1990) (per curiam) (quoting *Menendez*, 817 F.2d at 740 n. 5); see *Clark*, 915 F.2d at 639 ("A lawsuit

[under section 1915(d) ] is frivolous if the ‘plaintiff’s realistic chances of ultimate success are slight.’” (quoting *Moreland*, 899 F.2d at 1170)). *Sun v. Forrester*, 939 F.2d 924, 925 (11th Cir. 1991), *reh ’g denied*, 503 U.S. 999 (1992); *see also Weeks v. Jones*, 100 F.3d 124, 127 (11th Cir. 1996) (stating that “[f]actual allegations are frivolous for purpose of § 1915(d) when they are ‘clearly baseless;’ legal theories are frivolous when they are ‘indisputably meritless’”) (citations omitted).

The court concludes that the plaintiff has not taken this appeal in good faith because it is frivolous. Accordingly, it is ORDERED that the Plaintiff’s Motion for Leave to Appeal *In Forma Pauperis* (Doc. # 139) is DENIED.

DONE this 30th day of July, 2008.

/s/ W. Keith Watkins  
UNITED STATES DISTRICT JUDGE